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ALTERATION OF A NOTE LEFT IN THE HANDS OF PAYEE AFTER IT HAD BEEN PAID.

We considered in 81 Cent. L. J. 46, the distinction between an incomplete negotiable instrument stolen and negotiated and a completed instrument stolen before delivery. In that treatment there was no question as to maturity of the instrument. In Fairfield County Nat. Bank v. Hammer, 95 Atl. 31, decided by Connecticut Supreme Court of Errors, the question before the court was that of a *bona fide* holder of a past due instrument, paid and altered so as to appear negotiable before maturity, claiming the right to collect it.

The court held that the section of Negotiable Instruments Law which provides that: "When an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor" applied to alterations in a note not yet due. We think, however, this is not so very evident. "Due course" may be conceded ordinarily to mean negotiation before maturity, but a materially altered paper appearing to be not yet due, *prima facie* may come into the hands of another in "due course."

A material alteration of amount is not protected by this section except according to original tenor of a note, and there can be no rational distinction between an alteration in date and an alteration in amount in this respect—the alteration is expunged, so to speak, and the paper enforced according to its true reading. Certainly, this would be so, if before maturity alteration in date is made.

Furthermore, the fact that an innocent holder is protected at all as to forged alteration is because there is nothing suspicious on the face of the paper. It imports regularity as to him, but his protection is not complete. If the alteration is from fifty to two hundred and fifty dollars he is loser of two hundred dollars. Why is what is imported limited in one sort of alteration and not in another, when the section refers to all material alterations?

This kind of reasoning appears to us to be very pertinent to the facts in the abovementioned case. These facts show that a note was paid by the maker at maturity and permitted to remain uncanceled in the hands of the payee. This was done because of the business and personal relations of confidence between maker and payee. The payee altered the note so as to extend the date of maturity and negotiated it at plaintiff bank.

The opinion says: "The trial judge has found that the defendant was careless in allowing McDermott to retain the note after it had been paid, but he has declined to hold, that, as a consequence, the defendant was liable. We do not think this finding compels such conclusion. In a sense, it was careless to leave the note with McDermott after it had been paid, but the business and personal relations of confidence of the defendant with McDermott made natural a less careful course than would have been reasonable with one with whom long-continued business and friendly relations had not existed."

This is apart from the construction we put upon the section of the Negotiable Instruments Act, but there is an inference in what the court says, that had the payee been a casual acquaintance the maker

would have been held. But it seems to us that this consideration has nothing whatever to do with paper that is apparently genuine. Shall it be allowed to go into the secret thoughts of men about each other to ascertain whether third parties shall be benefited or concluded thereby?

In this case there was personal trust in a friend, relied upon for convenience merely, and the general principle that "a maker cannot reasonably be held to foresee that the trusted holder of a fully completed note will fraudulently alter its terms and then negotiate it, and negligence cannot be predicated upon the failure to anticipate this result" seems not unreservedly to apply. This trusted holder was trusted for personal reasons and after an act which was not contemplated to occur, viz: voluntarily leaving a note in his hands after it had been paid. Such an act was purely gratuitous and the reposer of such a trust ought to abide by the results of his misplaced confidence.

Upon the whole, it seems to us the Connecticut court was wrong in its limitation of the section of Negotiable Instruments Act to notes not yet due and also wrong in not holding the maker responsible for an act inherently careless, so far as third persons are concerned. It will be seen from this that we revise our view expressed on page 47 of 81 Cent. L. J., that "there is no manifest purpose in the Negotiable Instruments Law to create a contract where by old ruling none existed." The section above quoted does show that a criminal act may create a contract, though none existed before. This is because of the nature of commercial paper, and paper does not cease to be commercial because it is overdue. Transfer then is notice of dishonor, but there is transfer all the same, subject to affirmative defenses.

NOTES OF IMPORTANT DECISIONS.

MUNICIPAL CORPORATIONS—FORBIDDING MOTION PICTURES CREATING RACIAL PREJUDICE.—In an injunction proceeding to restrain the commissioner of licenses for New York City from interfering with the production of a film play, New York Supreme Court exercises its own judgment on the question whether the production was reasonably calculated to arouse race prejudice and tend to disorder. Life Photo Film Corp. v. Bell, Comr., 154 N. Y. Supp. 763.

There was no question as to the morality and decency of the motion picture, but by the National Board of Censors, it was thought calculated to arouse the prejudice of aliens and create disorder. The Board of Censors is called a self-constituted board and it is said to be a question how far a public officer should base his action on its opinions.

The court finds that the only possible objection is that supersensitive Teutons might consider the picture an unfair characterization and misrepresentation of the German army. But as it merely represents a dream scene, forty-five years ago, in which the supposed cruelties are shown to be reprobated by higher officers in the Germany army, the picture hardly ought to be deemed sufficient "to arouse a moderately sensible audience to wrath and racial strife."

The rule deduced from this ruling is similar to that applied in nuisance cases, which rule regards in no way supersensitive individuals, but the ordinary citizen, who may have a better claim in some neighborhoods for the suppression of a nuisance than in other neighborhoods.

It was said: "The court must assume that the term 'American' includes all classes of citizens, native and nationalized, irrespective of where they originally came from, whether it be Germany or any other country; * * * What has become known as 'hyphenated' citizenship has no place or standing. It cannot properly be recognized in the court or any other branch of the government.

We are far from agreeing that courts should look to recognition by courts or statute to determine to what things a municipality seeking to preserve order should look. Its jurisdiction in this way is very wide. But the court may say for any reason appearing to it sufficient, that property rights shall not be re-

strained, when their exercise does not reasonably tend to create conditions tending to disorder. We think the judgment restraining the commissioner was right in this case, but the reasons therefor were beside the mark.

CODE PLEADING—FACTS IN MITIGATION OF DAMAGES AS NEW MATTER.—Gamble v. Keyes, 153 N. W., 888, decided by South Dakota Supreme Court, was an action for damages for an alleged unlawful search and seizure, and defendant by his answer denied any malice. Motion to strike out was made on the ground that no facts constituting a defense were alleged.

The Supreme Court, in sustaining the trial courts' overruling of the motion, holds that at common law the facts pleaded were admissible under the general denial as in mitigation of damages, especially where exemplary damages were recoverable, and then considers whether under the code they should be set up as new matter.

The code provision of South Dakota is very much as generally found in code states and reads as follows: "The answer of the defendant must contain: 1, a general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief. 2. A statement of any new matter constituting a defense or counterclaim, in ordinary and concise language without repetition."

The two things required by the code are (1) a denial, general or specific, of each material allegation of the complaint, and (2) "new matter constituting a defense." It seems clear that matter in mere mitigation could not come under the first clause, unless it is to deny the allegation of malice. That such an allegation is material must be admitted. And does it not seem that there is the right by specific denial to meet each and every material allegation?

But the court placed its decision upon the ground that this was new matter constituting a partial defense. We think there is less difficulty in sustaining the ruling of the trial court under the privilege of specific denial to each material allegation of the complaint than in calling it new matter and denominating it a partial defense. The former rule is in the spirit of the code that looks for a concise statement as to everything which may present full issues in a cause. It also would seem that the code means that omission in answer would prevent evidence in mitigation of damages.

THE FEDERAL TRADE COMMISSION. — PART II. — JUDICIAL POWERS.*

Judicial Powers.—The feature of the bill around which discussion principally raged in Congress is § 5, which makes the Commission an adjunct to the judiciary, conferring upon it powers judicial in their nature. The first words of that section, and they are very simple but very far-reaching, form this short sentence: "That unfair methods of competition in commerce are hereby declared unlawful." The next sentence is as follows: "The Commission is hereby empowered and directed to prevent persons, partnerships or corporations * * * from using unfair methods of competition in commerce." Note again that here the Commission's jurisdiction extends over persons and partnerships as well as over corporations. The section then proceeds to provide that whenever the Commission believes that any unfair method of competition in interstate or foreign commerce is being used, and *if a proceeding by the Commission in respect thereof will be to the interest of the public*, it shall serve the person charged with a complaint stating the charge and fixing a day for hearing. The defendant has the right to appear and show cause. Testimony is taken and reduced to writing, and if the Commission is of the opinion that an unfair method of competition is being used, it shall order the same to be desisted from. If the defendant fails to obey the order, the Commission can take the case to the Circuit Court of Appeals, or the defendant himself can take it to the Circuit Court of Appeals. Whether the case be appealed by the Commission or by the defendant, the entire transcript is furnished at the expense of the Commission; this is a unique provision.

In the Circuit Court of Appeals it is provided that "the findings of the Commission as to the facts, if supported by testimony,

*Part I of this article appeared in last week's issue; Part III will follow next week.

shall be conclusive." It will be readily seen that this sentence will be a storm center. After the case is in the Circuit Court of Appeals, either party may take additional testimony upon satisfactory ground shown to the court. The court may enter a decree affirming, modifying or setting aside the order of the Commission. The decree of the Circuit Court of Appeals is final, except for the right of the Supreme Court to order any case brought to it by a writ of certiorari.

The two interesting questions that arise out of this section of the law are these: (1) What is meant by "unfair methods of competition?" (2) Has Congress the power under the Constitution to make the Commission's findings as to the facts conclusive, if supported by testimony?

(1) *What Are Unfair Methods of Competition?*—The rule of construction is familiar that where a statute employs words having a technical meaning in the law, the words will be given that meaning in the statute. The words "unfair competition" have a well-understood meaning in the law as applying to those practices by which one man attempts to market his goods in such way that they will be taken for the goods of another. It is commonly known as "palming off." Infringement of trade-mark is one branch of this subject, but, at the present time, the cases of unfair competition in which trade-mark is not involved are far more numerous than the trade-mark cases. Any device by which one merchant attempts to appropriate the established reputation, the results of the business efforts of his rival, by putting his goods on the market in such way that the public is apt to be deceived into thinking them the goods of his rival, is unfair competition, as that term has heretofore been known in the law.

Notwithstanding this, I do not believe that the words "unfair methods of competition" in § 5 of the Trade Commission Law will be limited to the cases of "palming off." The Supreme Court's opinion in the Standard Oil case is the viaticum for any consideration of the Trade Commission Law, and that opinion has made an authoritative statement of another familiar rule important in the construction of this statute. Chief Justice White said:[9]

"Although debates may not be used as a means for interpreting a statute (United States v. Trans-Missouri Freight Association, 166 U. S. 318, and cases cited) that rule in the nature of things is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law, that is, the history of the period when it was adopted."

A resort to the debates on the Federal Trade Commission bill in both the Senate and the House discloses the fact that the evils which Congress designed to remedy by the Interstate Trade Commission were the evils arising from monopolies and combinations in restraint of trade, evils arising from the restriction of competition. Congress was not endeavoring to reach cases of unfair competition as heretofore known in the more restricted sense above given. Probably there is no branch of the law less technical or in which the processes of the court are more efficient to accomplish justice than in cases of palming off. The debates clearly show that what Congress was trying to reach was that kind of unfair competition which is indulged in with real intent ultimately to stifle competition. This is shown, first, by the fact that the Trade Commission bill was confessedly introduced in direct response to the President's speech, quoted at the beginning of this paper, in which he is seeking new instruments to enforce the Sherman Law. It is shown, secondly, by the entire course of the debates; and, thirdly, by the expression "unfair methods of competition." These words are taken directly from the opinion of Chief Justice White in the Standard Oil case, where[10] he summed up the heads of the charges against the Standard Oil Company, all of which combined to show that it was a monopoly under § 2 of the Sherman Law.

(9) 221 U. S., at p. 50.
(10) 221 U. S., at p. 42.

In this summing up, the heads mentioned by the Chief Justice are rebates, preferences from railroads, monopoly of pipe lines, contracts with competitors in restraint of trade, and then the Chief Justice uses this language:

"*Unfair methods of competition*, such as local price cutting at the points where necessary to suppress competition; espionage of the business of competitors, the operation of bogus, independent companies and payment of rebates on oil, with the like intent."

It is thus apparent that what Congress designed to forbid by the words "unfair methods of competition" was that kind of competition which is intended to have the effect in the end of stifling competition. It designed to stop restraint of trade and monopoly in the bud. The Sherman Law forbids (a) combinations in restraint of trade, and (b) monopoly and attempt to monopolize. Local price cutting—to take one of the chief justice's examples of "unfair methods of competition"—might not violate the Sherman Law on restraint of trade, because that section of the Sherman Law is aimed only at *combinations* in restraint of trade and the local price cutting might be done by an individual. So, also, local price cutting might not be preventable under the second section of the Sherman Law, for it might not, and especially at the start probably would not, reach the dignity of a monopoly. But this is one of the practices which, together with others, go to constitute monopoly, and are apt to end in monopoly or combinations in restraint of trade, and therefore ought to be suppressed as soon as it appears. The designs of § 5 of the Trade Commission Law is to give the Commission power to prevent all such practices before they have, alone or with other practices, grown to be violations of the Sherman Act.

It must also be observed that, while every unfair method of competition has not the proportions of a violation of the Sherman Law, neither is it true that every violation of the Sherman Law will be an unfair method of competition. Take, for example, the case of the Danbury hatters.[11] A hat factory in Danbury, Conn., had a strike of its workmen. The Federation of Labor organized a boycott all over the country and threatened the hat dealers of the country with a The Danbury Company sued the leaders of the boycott and the Hatters' Union for triple damages under the Sherman Law. It was held that this boycott was a restraint of interstate trade, forbidden by the Sherman Law. Manifestly, however, such a boycott is not a method of competition in interstate commerce and therefore would not be within the prohibition of the Trade Commission Law.[12]

A very familiar practice which amounts to an unlawful restraint of trade under the Sherman Law is the price maintenance agreement. It will be a nice question whether these agreements constitute unfair competition or not. A maker of saws sells them to jobbers and fixes the price at which the jobbers may resell to retailers. This would seem not to be unfair competition by the seller as against other makers of saws, because it is fixing a point *below* which the jobber may not go in his effort to undersell the saws of other makers and is to that extent a benefit to the sellers' competitors. Nor does it establish unfair competition among the various retailers, because the agreements put them all on the same footing. It can only be held to be an unfair method of competition, if the word "unfair" is referred to the relation of the method of competition to the public.

Is Section 5 too Vague?—Section 5 provides that "Unfair methods of competition in commerce are hereby declared unlawful." This language was fiercely attacked in the Senate as being too vague to be enforceable. It was said that it fixed no standard by which the business men of the country could know how to regulate their conduct.

(11) Loewe v. Lawlor, 208 U. S. 274.

(12) There does not seem to be anything in § 20 of the Clayton Law (Act of October 15, 1914) that would demand a different decision of Loewe v. Lawlor, had that case arisen after the Clayton Law was passed.

Outside of Congress, this objection of vagueness and also the general objection to a Commission was expressed in a substitute which was proposed in one of the newspapers for the Federal Trade Commission bill. That substitute was drawn by Mr. Reed, a New York lawyer, and was in the following language:

"A commission is hereby created and established, to be known as the Commission on the General Welfare and Social Justice of the United States, composed of five members, including the President, to serve during his term of office; L. D. Brandeis and Samuel Untermyer to serve until, in the opinion of the other members of the commission, they shall act unfairly, and George W. Perkins and Thomas W. Lawson, to serve for life.

"Every act and thing that is unfair, oppressive, unjust or inequitable, or opposed to the social welfare and justice of the United States, is hereby prohibited. Whenever the commission or any of its members shall have reason to believe that any person, firm, association or corporation is about to do any act or thing prohibited as aforesaid, the commission or such member shall issue an order prohibiting such act or thing, provided that if one member of such commission shall issue such order without the prior authority of the commission, an appeal shall lie from such order to the commission to be heard at its convenience, but in the meanwhile such order shall be obeyed.

"If any such person, firm, corporation or association shall disobey such order, or declare their intention so to do, then the commission or such member may apply to the district court, which shall imediately proceed to a determination of the matter, and if it shall appear that such person, firm, corporation or association has disobeyed such order, or declared an intention so to do, then the court shall impose such sentence as such commission or such member thereof shall deem fair and just.

"All laws heretofore enacted are repealed. The Congress of the United States is adjourned *sine die*, pending an amendment of the Constitution to abolish it. The courts of the United States are hereby continued, provided that their jurisdictions shall be limited to enforcing the orders of said commission."

The objection that § 5 of the Act, forbidding "unfair methods of competition," is too vague to be enforceable is completely met by the Supreme Court's decision in Nash v. U. S.[13]. That was a prosecution against a number of individuals for conspiracy in restraint of trade and conspiracy to monopolize contrary to the Sherman Law. The indictment was demurred to on the ground that since the interpretation put upon the Sherman Act in the Standard Oil and American Tobacco cases, the statute was so vague as to be inoperative on its criminal side. It was said for the defendants that those cases have established that—

"only such contracts and combinations are boycott if they sold the hats of this factory. within the Act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by *unduly* restricting competition or *unduly* obstructing the course of trade."

It was argued that this introduced—
"an element of degree as to which estimates may differ, with the result that a man might find himself in prison because his honest judgment did not anticipate that of a jury of less competent men."

And it was contended that the criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. The Supreme Court disposed of these objections in the following language:

"But apart from the common law as to restraint of trade thus taken up by the statute, the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death. 'An Act causing death may be murder, manslaughter, or misadventure according to the degree of danger attending it' by common experience in the circumstances known to the actor. * * * The criterion in such cases is to examine whether common social

(13) 229 U. S. 373.

duty would, under the circumstances, have suggested a more circumspect conduct."

If a prohibition against contracts which *unduly* restrain trade is not too vague to be enforceable, neither is a prohibition against "*unfair* methods of competition." The Standard Oil case itself furnishes the test which will be applied to the methods of competition that come under the scrutiny of the Commission. Adopting the language of the Chief Justice in 221 U. S., at page 58, I conclude that the court or the Trade Commission will say that § 5 of the Federal Trade Commission Law forbids any method of competition which, either from its nature or from the surrounding circumstances, justifies the conclusion that it was not performed with the purpose of reasonably forwarding personal interest and developing trade, but, on the contrary, with the intent to wrong the public and to limit the right of individuals.

(2) *Has Congress the Power Under the Constitution to Declare that the Commission's "Findings as to the Facts, if Supported by Testimony, Shall be Conclusive?"* —The Constitution gives Congress power to establish tribunals inferior to the Supreme Court and provides that the judges shall hold office during good behavior. The members of the Federal Trade Commission hold office for seven years. If the power conferred on them to prevent unfair methods of competition in business is a judicial power, it could not be conferred on these persons appointed for a term of years, except for the fact that the Commission's orders cannot be enforced except by resort to the court. For the same reason the Commission's order could not be made absolutely conclusive upon the court. Can it be made conclusive to the extent attempted, that is, in its findings of fact, if supported by testimony?

The argument in support of this provision, which is called the narrow court review, is based on the Supreme Court's decisions under the Hepburn Amendment of 1906 to the Interstate Commerce Act. The Hepburn Amendment provided that the Interstate Commerce Commission, when it is of opinion that a rate is unreasonable or a practice unjust, shall have power to determine what will be a reasonable rate or a just practice, and to order the carrier to cease from charging the unreasonable rate or engaging in the unjust practice, and to fix a reasonable rate or practice for the future, not exceeding two years. The Commission may also order reparation made by the payment of money to anyone damaged by the carrier's violation of the Act. Its orders, if not voluntarily obeyed, can be enforced only in the courts. The Hepburn Amendment provides, as to its orders other than for payment of money, that "if it appear that the order was regularly made and duly served," the court shall enforce obedience by injunction or other process.

Under this law, the Supreme Court has held that it cannot substitute its own judgment as to the reasonableness of a rate or practice for the judgment of the Commission if there is any testimony in the record to support the Commission's view. The court will examine the record and set the order aside if the Commission acted outside the scope of its constitutional or statutory powers, or acted arbitrarily, without giving the carrier notice or an opportunity to take testimony, or if its action is confiscatory, or if there was no testimony to support its finding, but not where the testimony was merely conflicting.[14]

It is argued that in these cases the Supreme Court has held that when the Interstate Commerce Commission holds that a rate or practice is unreasonable, its findings of fact are conclusive if there is any testimony to support them. Therefore it is said Congress may make the Trade Commission's findings of fact conclusive, if supported by testimony, because it is no more a judicial act to decide that a method of com-

(14) I. C. C. v. Ills. Central R. R., 215 U. S. 452; I. C. C. v. Union Pac. R. R., 222 U. S. 541; I. C. C. v. L. & N. R. R., 227 U. S. 88.

petition is unfair than to decide that a rate is unreasonable.

But there are distinctions between interstate transportation by the common carriers of the country and interstate trading by the merchants and manufacturers of the country. The business of the carriers is affected with a public interest. The government, in regulating their rates by a Commission, is only administering a function of government, as it would be if it were operating the railroads itself. But the carrying on of interstate trade is not a function of government. The distinction is not rendered unavailable by the fact that the Congress obtains its power to deal with unfair competion between traders and its power to deal with unreasonable rates of carriers from the same words of the Constitution, those giving it power to regulate commerce. If so, it would follow from the power of Congress to fix railway rates that it had power to prescribe the prices at which all goods should be sold in interstate commerce. This distinction between transportation and trading was recognized by the ablest and most insistent champion of the narrow court review, Senator Cummins, when he said, speaking on the subject of giving the Trade Commission power to lay down rules for the future:

"I doubt whether we could constitutionally do it, because there is a difference between prescribing a rule for business so fa as competition in commerce is concerned, and prescribing a rate which a common carrier may charge for its service."

Then, too, the duty of fixing a reasonable rate is, in theory at least, a mere matter of bookkeeping and computation, ascertaining cost of road and equipment, operating expenses, etc., and allowing a reasonable profit, while to say what is unfair competition involves ethical considerations.

It was said in the Senate that the duty of regulating the rates on 1,000 different articles between 1,000 different points was so clearly administrative that it was questionable whether it could be constitutionally reposed in a court. But who will question the right of Congress to repose in the courts the duty of deciding whether a corporation has practiced an unfair method of competition? This is a judicial act, just as it is a judicial act to ascertain whether one has violated the Sherman Law by unduly restraining trade.

Determining whether one has practiced unfair methods of competition, and, if he has, ordering him to desist, is the exercise of judicial power. It is not on the same footing as finding that a rate for transportation is unreasonable and fixing a reasonable rate for the future, which is administrative. If this be true, Congress cannot delegate to the Commission the right to make a conclusive finding of the facts, any more than it could delegate to it the right to make a conclusive finding that those facts constituted an unfair method of competition, which would be a finding of the law.

"Every judicial proceeding involves two things, the determination of fact and the determination of law." The one is just as much an exercise of judicial power as the other. In the great case of Kilbourne v. Thompson,[15] the House of Representatives had adopted a preamble and resolution, reciting the bankruptcy of Jay Cooke & Co., debtors to the government, their interest in a real estate pool, a settlement by their trustee in bankruptcy to the disadvantage of creditors, including the United States, by reason of which the courts were powerless to afford redress, and resolving that a committee be appointed—

"to inquire into the matter and history of said real estate pool and the character of said settlement, with the amount of property involved in which Jay Cooke & Co. were interested, and the amount paid or to be paid in said settlement, with power to send for persons and papers and report to this House."

It was held that a witness was not required to obey a subpoena issued by the Speaker at the instance of the committee,

(15) 103 U. S. 168.

and one ground of the decision was that the House of Representatives had—

"assumed a power which could only be properly exercised by another branch of the government, because it was in its nature clearly judicial."

This committee was directed merely to investigate facts, not to enter any order based on its findings, yet the court said it was the assumption of judicial power.

The original Interstate Commerce Law of 1887 made the Commission's findings of fact *prima facie* evidence only, when its orders were taken to the court to be enforced. In an early case before the District Court of Kentucky,[16] the point was made that the Act was an attempt to give judicial power to officers not appointed during good behavior. The opinion was by Judge Jackson, afterwards Mr. Justice Jackson, of the Supreme Court. He overruled the contention, apparently because the Commission's findings of fact were not made conclusive by the statute. He said (at page 613):

"The Commission is charged with the duty of investigating and reporting upon complaints, and the facts found or reported by it are only given the force and weight of *prima facie* evidence in all such judicial proceedings as may thereafter be required or had for the enforcement of its recommendation or order. The functions of the Commission are those of referees or special commissioners, appointed to make preliminary investigation of and report upon matters for subsequent judicial examination and determination."

The question is a very difficult one, and the decisions of the Supreme Court have not made it possible to answer it with confidence, but it seems that on principle, the provision that the Commission's findings of fact, if supported by testimony, are conclusive, is not valid, because it attempts to repose in a body appointed for a term of years the power to act finally in a judicial capacity. If this conclusion is not correct, there is nothing to prevent Congress from enacting that the President shall appoint a master for every district court to hold office for one year, to whom all equity cases shall be referred, and that his findings of fact, if supported by testimony, shall be conclusive upon the court. An administration could then threaten the large corporations with equity suits under the Sherman Law. Those masters in chancery who did not return findings agreeable to the administration could be denied reappointment, and the very evils would be produced which are sought to be prevented by the principle that forbids lodging judicial power in officers whose term is other than during good behavior.

(16) K. & I. Bridge Co. v. L. & N. R. R., 37 Fed. 567.

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BIGAMY—FORMER MARRIAGE.

STATE v. SMITH.

Supreme Court of South Carolina. May 14, 1915.

85 S. E., 958.

Where defendant married the daughter of his half-sister and no proceeding to have it declared invalid was ever commenced, his marriage to another woman after separation from his first wife was bigamous.

HYDRICK, J. Defendant appeals from sentence on conviction of bigamy. In 1882, he married Leonora Harris, the daughter of his half-sister. They cohabited as man and wife for thirty years or more, and raised a family of seven children. Some three or four years ago, they separated. In 1913, after the separation defendant married another woman, M. E. B. Harris, and cohabited with her as his wife up to the time of the trial, at which time both women were alive. The sole defense is that the first marriage, being within the degrees prohibited by statute, was incestuous and void, and therefore the second was not bigamous.

Questions affecting marriage and its consequences are of grave importance to the citizens and the state, and they deserve the most careful consideration.

In State v. Barefoot, 2 Rich. 209, decided in 1845, it was held that a nephew might law-

fully marry his aunt; and having married again while she was alive, he was guilty of bigamy. In that case, the court pointed out the difference between executory and executed contracts of marriage, and, also, the difference between marriages which are void and those which are only voidable—differences of the utmost importance in the determination of the status and rights of the immediate parties thereto, and the consequences, as they affect the innocent offspring of such unions, and society, or the state. It was there shown that at common law the marriage in question was not void, but merely voidable, and until avoided by decrees of a court of competent jurisdiction, it was valid and binding, and the subsequent marriage was bigamous. It was also held, upon clear and cogent reasoning, that, although the immediate parties to such an incestuous union may deserve punishment, their offspring have rights that should not be ignored.

In Bowers v. Bowers, 10 Rich. Eq. 551, 73 Am. Dec. 99, decided in 1858, it was held that a marriage between uncle and niece was so far valid as to protect the claim of the wife, after the death of her husband, to her distributive share in his estate. The avowed object of that appeal was to obtain the review and reversal of the decision in Barefoot's Case. But it was reaffirmed, and the court again pointed out the difference between void and voidable marriages, and showed that the latter must be avoided, if at all, during the life of the parties. The decision in those cases is fully sustained by the authorities therein cited, and is in accord with the great textwriters and the consensus of judicial opinion in England and in this country.

[1-3] But it is contended that, at the date of those decisions, there was no statute in this state prohibiting such marriages, and no court with power to annul them—a fact which was adverted to in the opinions of the Court—and that, since that time, the legislature has, by statute, not only prohibited such marriages, but has made the parties thereto guilty of the crime of incest, which was not a crime at common law. The question must therefore be considered as it may be affected by subsequent legislation. The first legislation on the subject appears in the Revised Statutes of 1873; and this has been brought forward in subsequent revisions, and appears in Section 3743 of the Civil Code of 1912, which, so far as pertinent, reads:

"All persons, except idiots and lunatics, not prohibited by this section, may lawfully contract matrimony. No man shall marry his * * * sister's daughter. * * * No woman shall marry her * * * mother's brother."

In passing, it may be remarked that the fact that the relationship in this case is only of the half-blood, and therefore not strictly within the prohibition of the statute is of no consequence; for upon reason and authority, the words used in the statute must be taken in their ordinary meaning, and therefore include relations of the half-blood, and also illegitimates who are within the prohibited degrees. 16 A. & E. Enc. L. (2d Ed.) 137, and cases cited in notes; 19 A. & E. Enc. L. 1175; 1 Bish. Mar. & Div. §§ 745, 748.

By Section 1 of "An act to regulate the granting of divorces," passed in 1872 (15 Stat. p. 30), either party to a marriage the validity of which was doubted or denied was authorized to institute a suit to determine the validity thereof; and, while that act was repealed in 1878 (16 Stat. p. 719), the provision above referred to has been brought forward in subsequent revisions, and now appears as Section 3752, Civ. Code, 1912. In 1882 (17 Stat. 681), an act was passed, which is now Section 3753, Civ. Code, 1912, and reads:

"The court of common pleas shall have authority to hear and determine any issue affecting the validity of contracts of marriage, and to declare said contracts void for want of consent of either of the contracting parties, or for any other cause going to show that, at the time the said supposed contract was made, it was not a contract: Provided, that such contract has not been consummated by the cohabitation of the parties thereto."

In 1884 (18 Stat. 857) incest was made a crime, and carnal intercourse between persons within the degrees of relationship within which marriage was prohibited by Section 3743, supra, was made incest. Crim. Code, § 388. It appears, therefore, that at the time of the marriage between defendant and Leonora Harris, in 1882, incest was not a crime. It follows that, if that marriage was only voidable, and not absolutely void, his cohabitation with her after the passage of the act of 1884, making it a crime, cannot be punished as incest; for, as to the parties to that marriage, the statute would be ex post facto.

The question then is whether the prohibition of the statute renders the marriage void ab initio, for we have seen that, but for that prohibition, it would be only voidable, and the subsequent marriage bigamous. In determining this question, it is important to keep in mind the difference, already adverted to, between void and voidable, as applied to such contracts. No doubt the legislature had

in mind these differences when it added the proviso of Section 3753, supra, which limits the court in declaring marriages void, when they have been consummated by cohabitation of the parties.

In 1 Bish. Mar. & Div. § 253 et seq., the difference between the void and voidable is pointed out, as applied by text-writers and judges to marriage contracts, and it is there shown that there is a peculiar sort of voidable with reference to marriage contracts which does not pertain to others. In Sections 258 and 259, the author thus defines void and voidable marriages (pages 958, 959):

"A marriage is termed void when it is good for no legal purpose, and its invalidity may be maintained in any proceeding, in any court, between any parties, whether in the lifetime or after the death of the supposed husband and wife, and whether the question arises directly or collaterally.

"A marriage is voidable when in its constitution there is an imperfection which can be inquired into only during the lives of both of the parties, in a proceeding to obtain a sentence declaring it null. Until set aside, it is practically valid; when set aside, it is rendered void from the beginning."

In discussing the effect of statutes prohibiting certain marriages, the same author (Section 289), says:

"If it does not appear in the affirmative words of a statute whether the marriage it forbids is void or voidable, we seek the legislative intent in the prior law. And we follow the rule that all laws, written and unwritten, at whatever dates established, are to be interpreted into one harmonious system of jurisprudence. The written law of void or voidable within the prohibited degrees is, in our states generally, what the English unwritten law, modified by the written, was before the enactment of St. 5 & 6 Will. 4 C. 54. And we have seen that through the workings of a statute of Henry VIII, the marriage became voidable. Therefore, as every enactment is to be interpreted in harmony with the written law, and as superseding it only to the extent required by its express terms or necessary operation, it results that, unless the one defining the forbidden degrees declares the marriage it prohibits void, it is but voidable."

In 26 Cyc. 846, it is said:

"At common law the canonical impediments of consanguinity and affinity rendered a marriage voidable merely, and the same is true where such marriages subject to such impediments are merely prohibited by the statute; and in some jurisdictions statutes declaring such marriages void have been construed as meaning voidable only."

Sedgwick, at page 89, of his work, on Statutory and Constitutional Law, says:

"It does not, however, follow that, when an act is forbidden by statute, everything done in contravention of the act is to be considered void. This would lead to results of too serious a character. So, in regard to marriage, where a statute imposes a penalty on an officer for solemnizing the union, but does not in words declare the marriage void, * * * the marriage is valid, and the penalty only attaches to the officer who performs the act expressly prohibited."

These authorities show that, notwithstanding the prohibition of Section 3743, which does not, in express terms, declare marriages therein prohibited to be void, the marriage of the defendant to Leonora Harris, in 1882, was not void, but only voidable. It follows that his marriage in 1913, was bigamous.

Judgment affirmed.

Gary, C. J., and Watts, Fraser, and Gage, JJ., concur.

NOTE.—*Marriage Within Prohibited Degrees of Consanguinity as Being Void or Only Voidable.*—There can be little question as to the proposition that one cannot be convicted of bigamy where it appears by the evidence that a former marriage was null and void. McCombs v. State, Tex. Cr. App., 99 S. W. 1017, and cases cited therein and in 9 L. R. A. (N. S.) 1036, where there is annotation of this case. See also People v. Shaw, 259 Ill. 544, 101 N. E. 606. There is a rule of presumption of validity where a former marriage is shown, but this has nothing to do with the essential fact of its being shown to be void either by evidence introduced by the prosecution or the defense. Nor does our inquiry take us into the field of cases, where the second marriage is entered into in the belief that there was no previous existing marriage that was valid. If there was a valid existing prior marriage, the second marriage is not the less bigamous, howsoever the good faith in contracting it, unless statute saves it from being bigamous. Staley v. State, Neb., 131 N. W. 1028, 34 L. R. A. (N. S.) 613, and cases cited in the opinion and note. See also Baker v. State, 86 Neb. 775, 126 N. W. 1097, 27 L. R. A. (N. S.) 1097.

Under the rule of an absolutely void marriage forming no basis for prosecution of bigamy in a second marriage the Staley case, *supra*, shows the sustaining of conviction for bigamy, where the bigamous marriage followed marriage with a first cousin in Iowa, where it was valid, though the Nebraska statute where the bigamy was committed, declared such a marriage to be void. See also State v. Hand, 87 Neb. 189, 126 N. W. 1002, 28 L. R. A. (N. S.) 753. This seems against the principle that incestuous marriages if denounced by the *lex fori* will not be recognized, though valid where performed. U. S.

ex rel. v. Rodgers, 109 Fed. 886; Pennegar v. State, 87 Tenn. 244, 10 S. W. 305, 2 L. R. A. 703; State v. Kennedy, 76 N. C. 251.

As to incestuous marriages being void there is a very interesting opinion by Sharswood, J., of Pennsylvania Supreme Court. Walter's Appeal, 70 Pa. St. 392. He says that "At common law there were two kinds of disabilities affecting the validity of the marriage relation. The first were canonical, depending on the law of the church and enforced in the ecclesiastical court. Among these were consanguinity and affinity. Those causes rendered marriage voidable only, and it was necessary that the nullity should be declared during the lifetime of the parties, otherwise they were and continued valid for all civil purposes." Then he speaks of marriages void *ab initio*, that is to say, for prior marriage undissolved, infancy, idiocy, lunacy, as to which no sentence of nullity is required. He then says there are no merely canonical disabilities in this country, but as to marriages within certain degrees of consanguinity or affinity there must be express statutory provision to make them void.

In Bowers v. Bowers, 10 Rich. Eq. (S. C.) 551, 73 Am. Dec. 99, marriage is spoken of as a merely civil contract, and incapacity in respect of proximity of relationship is a canonical disability. "Neither the courts of chancery in England nor any of the law courts had cognizance of canonical disabilities." *A fortiori* it may be argued that canonical disabilities never formed any part of our common law.

In Martin v. Martin, 54 W. Va. 301, 58 Atl. 233, it is said, *arguendo*: "In England and many of the United States marriages between relations of the forbidden degrees are void," but the word may have been used only in the sense pointed out by Judge Sharswood, *supra*. See also Stapleberg v. Stapleberg, 77 Conn. 31, 58 Atl. 233. If, however, we take out of our common law merely canonical disabilities, whether a marriage within prohibited degrees is *ipso facto* void, needing no decree of annulment and insufficient as a predicate of former marriage in a bigamy prosecution, or whether they are merely voidable and such a marriage being sufficient in a bigamy prosecution, must depend on the statute of the state, where the marriage was celebrated. C.

ITEMS OF PROFESSIONAL INTEREST.

WORKMEN'S COMPENSATION ACT—INJURED WORKMAN ASSISTED BY MEMBERS OF FAMILY.

Among the batch of workmen's compensation cases that came recently before the Court of Appeal were two in which novel questions arose, because of the services of members of the family of a workman being invoked in order to assist in the carrying out of the employment of the workman. Thus, in the former of those cases—namely, Roper v. Freke (noted *ante*, p. 180)—a workman who was employed in managing a dairy farm found it necessary to obtain assistance in his work, as it was more than one man could perform. Accordingly, two younger sisters, who lived with him, gave part of that assistance. To them the workman attributed, in the shape of money and board, a specified sum per week. There was no contract between the workman and his sisters for payment of wages as such. On the workman suffering "injury by accident arising out of and in the course of" his employment, within the meaning of sect. 1, sub-sect. 1, of the workmen's compensation act, 1906 (6 Edw. 7, c. 58), the question raised was what deductions, if any, ought to be made from his remuneration for the purpose of ascertaining his "average weekly earnings," so that the maximum amount which he could receive as compensation might be arrived at. In other words, were the sums attributed to the services of the workman's younger sisters to be taken into account? The workman could not have earned the wages that he did without the help that his family afforded him. On that ground, therefore, it was clearly much open to argument that, before his "average weekly earnings" were capable of being computed, the money that such help cost him ought to be deducted therefrom. But that was not the view that either the learned county court judge or the Court of Appeal could be prevailed upon to adopt. The absence of an express contract between the workman and his sister weighed with the Court of Appeal as a reason for the disallowance of the deduction in question. The money disbursed in rewarding the sisters for the services which were rendered by them was regarded in the same light as cash paid for the food that he consumed and the clothing that he wore. Neither could be dispensed with. To enable the workman to perform his duties to his employer both were essentially requisite. But in no case has it ever been ventured to be asserted that the cost of food and clothing ought to be deducted before assessing "average weekly earnings." Again, it was not able to be established that the payments made to the sisters was so necessary to the performance of the workman's duties that it ought to be taken that part of his wages was intended to be so applied. There being nothing, therefore, to show that part of the wages was paid to the workman for any purpose other than his remuneration personally, no deduction in respect thereof was permissible.—*Law Times* (London).

BOOK REVIEWS.

VIZETELLY'S DESK-BOOK OF ERRORS IN ENGLISH.

"English as she is spoke" is often no worse than "as she is wrote." This being true, even lawyers will welcome the new edition of the little book written by Frank H. Vizetelly, under the title, "A Desk-Book of Errors in English."

Mr. Vizetelly, who was managing editor of the New Standard Dictionary of the English Language, has brought to his task the benefits of an experience which very few men have enjoyed. For this reason his observations and recommendations are quite valuable to the busy worker who wishes competent advice on the proper use of words in doubtful cases.

Opening the book at random, we notice the comment on the use of the present or the passive participle of the word "build." Shall we follow the author when he writes, "While the Temple of the Lord **was building**" instead of **being built**; or with Dr. Johnson, in writing to Boswell of his "Lives of the Poets," where he says, "My Lives **are reprinting**'" instead of **are being reprinted**; or with Macauley when he writes, "Chelsea hospital was building." On this point, after quoting various examples, the author says: "**Being** has a very special modern use with passive forms of verbs to express progressive action. For example, is, are or was being built expresses what is expressed also by is, are or was building. Both forms are permissible, but "is being built" is more frequently heard and, perhaps, is preferable.

The above is an illustration of the concise yet satisfactory explanation given regarding the use of doubtful expressions. Since also these observations are arranged alphabetically under the expression, the meaning of which is in doubt, the work is quite accessible to the busy writer and is, in fact, what its name implies—a desk-book.

Printed in one 16 mo. volume of 232 pages, bound in red cloth, and published by Funk & Wagnalls Company, New York.

BOOKS RECEIVED.

Proceedings of the Eighth Annual Conference under the Auspices of the National Tax Association. (Formerly "State and Local Taxation"). Held at Denver, Colorado, September 8 to 11, 1914. Madison, Wis. National Tax Association. 1915.

HUMOR OF THE LAW

The Laws sat about the long green table. All the fundamentals were there save one. Even the decrepit Salic Law was present, dozing between the Mosaic Laws and the Law of Primogeniture.

The chairman of the Law of the Land called the meeting to order.

"Are we all present?" he asked.

It was the Blue Laws who responded.

"I don't see nothin' of the Law o' Nations," he squeaked.

"The Law of Nations has been abolished," the chairman sharply replied. "The business of the convention will now proceed."—Cleveland Plain Dealer.

"If some of these financiers keep telling on one another they'll all end with the character that Cal Clay gave the deacon."

The speaker was Gifford Pinchot. He resumed:

"Cal Clay was a witness in behalf of the deacon, who was up for chicken stealing.

"'Calhoun, my man,' the lawyer said, 'what do you know of the deacon's character?'"

"'Hit am unbleachable, sah,' Cal replied."—Washington Star.

"A woman just can't keep a secret," the lawyer declared, opposing a statement.

"Oh, I don't know," contradicted the fluttery lady. "I've kept my age a secret ever since I was twenty-four."

"Yes," he replied, "but one of these days you will give it away. In time you will just simply have to tell it."

"Well," she replied, with confidence, "I think that when a woman has kept a secret for twenty years she becomes pretty near knowing how to keep it."

Among those called to the stand in a case recently tried in an Ohio court was an insurance adjuster, who had been sent by his company to adjust the loss of a building which figured in this suit.

"How did the fire start?" demanded the attorney for the other side, fixing a stern eye on the witness.

"I couldn't say certainly," said the adjuster, "and nobody seemed able to tell; but it struck me that it might have been the result of friction."

"What do you mean by that?" demanded the attorney.

"Well," said the adjuster, gravely, "friction sometimes comes from rubbing a $10,000 policy on a $5,000 building."

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the Webb Pub. Co., St. Paul, Minn.

1. **Account, Action On**—Plea.—A plea to a claim on book account against the estate of claimant's husband which does not show that the items did not affect claimant's separate estate is insufficient.—Metcalf v. Metcalf's Estate, Vt., 94 Atl. 1.

2. **Adoption**—Foster Parents.—Children adopted in Louisiana held to acquire no contract rights to land subsequently acquired in Alabama by their foster parents, by a clause in the instrument of adoption requiring them to support the adopted children and invest them with all the rights of legitimate children in their estate.—Hood v. McGehee, 35 Sup. Ct. Rep. 718.

3. **Adultery** — Defined. — "Adultery" is unfaithfulness of a married person to the marriage bed; voluntary sexual intercourse by a married person with another than her or his husband or wife.—State v. Hart, N. D., 152 N. W. 672.

4. **Aliens**—Naturalization.—Certificate of citizenship granted native-born citizen held not subject to cancellation, under Naturalization Act, § 15, because declaration of intention was made before a British certificate of naturalization previously applied for was issued.—United States v. Hodgman, U. S. D. C., 221 Fed. 1918.

5. **Animals**—Reasonable Care.—An agreement to pasture cattle held to bind the owner of the pasture to use reasonable care to keep it supplied with water and to give the owners of the cattle timely notification in case of failure in the supply.—Cox v. Chase, Kan., 148 Pac. 766.

6. **Appeal and Error**—Final Order.—Order of federal court, on petition of Interstate Commerce Commission, filed under Act Feb. 4, 1887, § 12, directing officer of corporation to produce documents called for by the Commission, is final, so as to sustain appeal to federal Supreme Court.—Ellis v. Interstate Commerce Commission, 35 Sup. Ct. Rep. 645.

7. **Attorney and Client**—Misconduct.—A solicitor, obtaining money from a client on false representations that her suit was progressing when he had not begun a suit, is guilty of misconduct justifying disbarment.—In re Eaton, N. J., 94 Atl. 31.

8.——Misrepresentation. — An attorney who fraudulently obtained funds from his client by misrepresentations as to the status of the suit should be disbarred.—In re Colyer, N. J., 94 Atl. 29.

9.——Parties.—Where a claim was assigned to one who had another claim against the same debtor, so that one suit could be brought for both, and both claimants signed the attachment bond, both are proper parties plaintiff in an action against the attorney for negligence.—Noziska v. Aten, S. D., 152 N. W. 694.

10. **Bankruptcy**—Composition.—Effect of composition proceedings authorized by Bankr. Act July 1, 1898, § 12, as amended June 25, 1910, in a measure supersedes bankruptcy proceeding, and reinvests the bankrupt with all his property, free from the claims in bankruptcy.—Cumberland Glass Mfg. Co. v. De Witt, 35 Sup. Ct. Rep. 636.

11.——False Pretenses.—Suit by trustee in bankruptcy against directors of bankrupt corporation held justifiable in a court of bankruptcy under Bankr. Act, §§ 23b, 70e, under allegations that the officers by false pretenses have withdrawn its funds.—Park v. Cameron, 35 Sup. Ct. Rep. 719.

12.——Forged Bills of Lading.—Foreign bankers, having paid in good faith drafts with forged bills of lading covering alleged through shipments to a foreign port, held not chargeable with knowledge that preference was intended, within Bankr. Act July 1, 1898, §§ 60a, 60b, as amended by Act Feb. 5, 1903, where bankrupt consignors substituted genuine bills of lading covering cotton subsequently shipped.—Pyle v. Texas Transport & Terminal Co., 35 Sup. Ct. Rep. 667.

13.——Manufacturer.—A bankrupt corporation, engaged in the business of preparing, putting up, and selling what are commercially known as Maraschino cherries, held to conduct a "manufacturing establishment," within Ky. St. § 2487, and priorities given under such statute held applicable under the Bankruptcy Act.—Central Trust Co. of Illinois v. George Lueders & Co., U. S. C. C. A., 221 Fed. 829.

14.——Provable Debt.—Judgment for damages for plaintiff in trover to recover goods purchased when insolvent, where no fraudulent misrepresentations are shown, is a provable debt, within Bankr. Act July 1, 1898, § 63a (4).—Kreitlein v. Ferger, 35 Sup. Ct. Rep. 685.

15. **Bills and Notes**—Antecedent Debt.—Secret agreement between maker and payee of check unconditional on its face, and not postdated, that it should not be negotiated until payee had delivered stock, held not to defeat the recovery of plaintiff bank, with which the

payee had deposited it as collateral for an antecedent debt and new loan.—German-American Bank of Seattle v. Wright, Wash., 148 Pac. 769.

16.——Burden of Proof.—Where it appears that a note was obtained by fraud or without consideration, the burden is on an indorsee to show that he was an innocent purchaser for value before maturity, in good faith, and in the ordinary course of business.—Barnard v. Tedrick, S. D., 152 N. W. 690.

17.——Payment.—That the surrender of a note and the taking of another in its stead constitutes an extinguishment and payment of the old note is a rebuttable presumption of fact.—Bennett v. Tremont Securities Co., Mass., 108 N. E. 891.

18.——Set-Off.—That a payee had sued a joint maker and partially compromised with a garnishee held to give rise only to a set-off, and not to constitute a complete defense as to an accommodation maker who signed the note on its face.—First Nat. Bank of McClusky v. Meyer, N. D., 152 N. W. 657.

19.——Trustee.—Bank discounting note for guardian and placing proceeds to his individual credit held not a bona fide purchaser under Ky. St. § 4707, and liable as a trustee of the fund.—Taylor v. Harris' Adm'r, Ky., 176 S. W. 168.

20. **Carriers of Goods**—Burden of Proof.—Where an interstate shipment contract contains a lawful provision for exemption, and it appears that the damage resulted from the exempted cause, the burden is on the shipper to show that the loss was occasioned by the carrier's negligence.—Canby v. Merchants' & Miners' Transp. Co., Ga., 85 S. E. 361.

21.——Interstate commerce.—Order of Interstate Commerce Commission reducing freight rate on coal from mines to a specified city held supported by findings that it is higher than coal rates between other points on the same route and yields a higher return than coal rates of other railroads and than the average earnings of such roads.—Louisville & N. R. Co. v. United States, 35 Sup. Ct. Rep. 696.

22. **Carriers of Live Stock**—Carmack Amendment.—Under the Carmack Amendment to the Interstate Commerce Act, a stipulation in bill of lading of animals that in case of loss the value of any animal shall be its cash value at time and place of shipment, not to exceed a certain sum is valid.—Galveston, H. & S. A. Ry. Co. v. Carmack, Tex., 176 S. W. 158.

23. **Carriers of Passengers**—Ejection.—A carrier held liable for the ejection of a passenger holding a mileage book, who had been told by the agent that if he missed connection over the short route, he could take the longer route, and who offered to surrender mileage for the difference in fares.—Hallman v. Southern R. Co., N. C., 85 S. E. 298.

24.——Licensee on Platform.—Passenger, recrossing track from station platform to assist her companion, held entitled to same degree of protection as on the original trip, and instructions to the contrary were properly refused.—Delaware, L. & W. R. Co. v. Price, U. S. C. C. A., 221 Fed. 848.

25. **Colleges and Universities**—Police Power.—The state may require a member of a Greek letter fraternity at another college to renounce his allegiance with such fraternity before admitting him as a student to the state university.—Waugh v. Board of Trustees of University of Mississippi, 35 Sup. Ct. Rep. 720.

26. **Commerce**—Intoxicating Liquors.—Delivery in Pennsylvania of liquors in interstate commerce on sales made in the state may not be punished under Act Pa. May 13, 1887 (P. L. 113), forbidding sale of liquors without license, though Wilson Act August 8, 1890, subjects liquors on their arrival in the state to the operation of its laws, as though produced in the state.—Rossi v. Commonwealth of Pennsylvania, 35 Sup. Ct. Rep. 677.

27.——Witness.—Corporate builder and owner of refrigerator and other cars, which he leases to railway companies, has the immunities of an ordinary witness against inquiry into its private business in an investigation by the Interstate Commerce Commission to determine whether the allowances where private cars are used violates Act Feb. 4, 1887, §§ 1-3, 15, as unduly discriminatory.—Ellis v. Interstate Commerce Commission, 35 Sup. Ct. Rep. 645.

28. **Constitutional Law**—Due Process of Law.—Validity under due process of law clause of Const. U. S. Amend. 14, of Rev. St. Mo. 1909, § 10322, requiring affidavit from officers that corporation has not issued and does not own trust certificates, cannot be attacked for uncertain meaning of such term, by corporation refusing to file affidavit on theory that it was not obliged to make any such disclosure.—Mallinckrodt Chemical Works v. State of Missouri ex rel. Jones, 35 Sup. Ct. Rep. 671.

29.——Fourteenth Amendment.—Equal protection of the laws is not denied to a person sentenced to 14 years' imprisonment on conviction of perjury, under Pen. Code Cal. § 126, though for other crimes of greater gravity 5 years' imprisonment may be the average maximum penalty.—Collins v. Johnston, 35 Sup. Ct. Rep. 649.

30.——Fourteenth Amendment.—Equal protection of the laws is denied railway companies by Laws Kan. 1905, c. 345, under which, as amended by Laws Kan. 1907, c. 275, an attorney's fee is allowed shipper who successfully sues a railroad for failure to furnish cars, while no such allowance is made in successful action by railroad in suit under such statute against a shipper failing to use the cars.—Atchison, T. & S. F. Ry. Co. v. Vosburg, 35 Sup. Ct. Rep. 675.

31.——Parole.—Revocation of a parole and direction that the convict be returned to custody held not a deprivation of liberty without due process of law, though he was given no opportunity to be heard.—Ex parte Horine, Okla., 148 Pac. 825.

32.——Practice of Medicine.—Rev. Laws, c. 76, § 8, penalizing the practice of medicine without authority, construed to include chiropractic, held not a denial of equal protection of the laws, though section 9 exempts certain classes, such as osteopaths, pharmacists, massage, etc.—Commonwealth v. Zimmerman, Mass., 108 N. E. 893.

33.——Public Service Corporations.—Ky. St. § 2487, giving a lien to employes and persons furnishing materials or supplies to public service corporations or manufacturing establishments in case of insolvency, held constitutional, not violating the equal protection clause.—Central Trust Co. of Illinois v. George Lueders & Co., U. S. C. C. A., 221 Fed. 829.

34.——Public Utilities.—The delegation to the board of public utility commissioners of the power to approve or refuse to approve a railroad lease held constitutional.—West Jersey & S. R. Co. v. Board of Public Utility Com'rs, N. J., 94 Atl. 57.

35.——Surface Water.—The common-enemy doctrine as to surface water was not so imported into railroad's irrepealable charter or its contracts with landowners from whom its right of way was acquired, as to be protected by the contract clause of the federal constitution.—Chicago & A. R. Co. v. Tranbarger, 35 Sup. Ct. Rep. 678.

36. **Contracts**—Damages.—Enhancement in value of the property accrues to the benefit of the purchaser, and not that of the warrantor, and is immaterial in action for damages for breach of warranty.—Parker v. Cramton, Ga., 85 S. E. 338.

37.——Delay.—One who contracted to do excavating for a building and to complete it within a certain time could not excuse delay because he encountered rock which required blasting.—John Cowan v. Meyer, Md., 94 Atl. 18.

38.——Mutual Promises.—The rule that, where mutual promises furnish the only consideration, they must be mutually binding, held inapplicable, where the theory of the case was that defendant had agreed to render services as plaintiffs' agent, and was grossly negligent, under Civ. Code 1910, § 3581, and not that there was no valuable consideration for the agreement.—Barber v. Roland, Ga., 85 S. E. 321.

39. **Corporations**—Assessment on Stock.—In levying an assessment against unpaid stock subscriptions of an insolvent corporation, it is the general rule that the assessment, when made, shall be collected by actions at law

against the several stockholders, leaving any defense, an individual stockholder may have to be determined in the action against him.—Rosoff v. Gilbert Transp. Co., U. S. D. C., 221 Fed. 972.

40.——Liability.—Where the proceeds of an unauthorized corporate note were deposited in a bank and checked out by an authorized officer, the corporation knowingly received the benefit of the proceeds and is liable on the note.—Paducah Wharfboat Co. v. Mechanics' Trust & Savings Bank, Ky., 176 S. W. 190.

41.——Preferential Rights.—A canal company, acting as a public service corporation in purveying water to property holders within an irrigation district, has no power to give preferential rights to purchasers of water rights directly from itself.—Byington v. Sacramento Valley West Side Canal Co., Cal., 148 Pac. 791.

42. **Courts**—Infringement.—Where the bill alleges infringement of patents and prays for an injunction and an accounting, it is one arising under the patent laws, of which the federal courts have original jurisdiction, without regard to citizenship.—Healy v. Sea Gull Specialty Co., 35 Sup. Ct. Rep. 658.

43.——Interstate Commerce.—Question sustaining appellate jurisdiction of federal Supreme Court over state court held not involved in rulings in suit by an elevator company to recover reasonable compensation from a carrier for services in handling grain, excluding evidence offered by the carrier on the ground that further payment would be contrary to the Interstate Commerce Act.—Pennsylvania R. Co. v. Keystone Elevator & Warehouse Co., 35 Sup. Ct. Rep. 644.

44.——Res Judicata.—A plea of res judicata, based on a judgment of a federal court adjudicating a federal right, asserts a right which, if denied by state court, makes a case reviewable in the federal Supreme Court, under Judicial Code, § 237.—Cumberland Glass Mfg. Co. v. De Witt, 35 Sup. Ct. Rep. 636.

45.——Safety Appliance Act.—Contention that error to prejudice of interstate railway company if the federal Safety Appliance Act applied to it, was committed by an instruction as to the degree of care required, is insufficient as basis of writ of error to a state court.—Erie R. Co. v. Solomon, 35 Sup. Ct. Rep. 648.

46.——Settled Construction.—Settled construction by state court of Const. Cal. art. 6, §§ 6, 8, as to sessions of said court, and the power of the judges of one county in another county, will be accepted as correct, notwithstanding subsequent amendment of November 8, 1910, relating to such sessions.—Collins v. Johnston, 35 Sup. Ct. Rep. 649.

47. **Covenants**—Breach.—Where there is a complete breach of a covenant of warranty on the sale of real property, the damage therefor is the value of the real property at the time of the covenant.—Hunt v. Hay, N. Y., 108 N. E. 851.

48. **Criminal Evidence**—Admissibility.—In prosecution as accessory before the fact to crime of arson, evidence that corks such as those used to plug the sprinklers were accessible to defendant held admissible to show that he had the means and the opportunity of procuring them without direct purchase.—Commonwealth v. Derry, Mass., 108 N. E. 890.

49. **Criminal Law**—Conspiracy.—Conspiracy to commit against the United States, contrary to Cr. Code § 37, an act criminal under Bankr. Act July 1, 1898, is not an offense arising under that act within section 29d, limiting prosecutions, but is governed by Rev. St. § 1044 (Comp. St. 1913, § 1708), limiting prosecutions for offenses not capital.—United States v. Rabinowich, 35 Sup. Ct. Rep. 682.

50.——District Offenses.—Each successive cutting into different mail bags with intent to steal the mail therefrom by one who cuts successively a number of such bags, is a distinct offense, punishable under Cr. Code. § 189.—Ebeling v. Morgan, 35 Sup. Ct. Rep. 710.

51.——Former Jeopardy.—Conviction of two distinct offenses of persons stealing stamps and postal funds, having first burglariously entered the post office, does not put them twice in jeopardy within Const. U. S. Amend. 5, where the offenses are made separate and distinct by Pen. Code, §§ 190, 192.—Morgan v. Devine, 35 Sup. Ct. Rep. 712.

52.——Parole.—Revocation of a parole and direction that the convict be returned to custody held not violative of the constitutional provision that no warrant shall issue but upon probable cause, supported by oath or affirmation.—Ex parte Horine, Okla., 148 Pac. 825.

53. **Death**—Conscious Pain.—Conscious pain substantially contemporaneous with death, intervening between fatal injuries and death, affords no basis for a separate award of damages under Act April 5, 1910, amending Employers' Liability Act April 22, 1908.—St. Louis, I. M. & S. Ry. Co. v. Craft, 35 Sup. Ct. Rep. 704.

54.——Evidence.—Under federal Employers' Liability Act reasonable expectation of benefit to parent held sufficient, and plaintiff did not have burden of showing that deceased would have constributed to his father's support and amount of such contribution.—Raines v. Southern Ry. Co., N. C., 85 S. E. 294.

55. **Dedication**—Withdrawal of Offer.—The landowner offering to dedicate land for a highway on certain conditions, which were not met by other landowners, held entitled to withdraw his offer, though the county had accepted it.—Jacobs Pharmacy Co. v. Luckie, Ga., 85 S. E. 332.

56. **Divorce**—Restoration.—Husband obtaining divorce held not entitled to restoration of land in his wife's name, even though he had furnished the consideration therefor, nor to interest in another piece of property valued at less than the value of the use of the wife's property.—Bean v. Bean, Ky., 176 S. W. 181.

57. **Easements**—Way of Necessity.—Where a railroad across a farm left no practical means of travel from one part to the other, there was an implied reservation of a way of necessity across such right of way, irrespective of statute.—Pittsburgh, C., C & St. L. Ry. Co. v. Kearns, Ind., 108 N. E. 873.

58. **Eminent Domain**—Damages.—While the use of a street for street railroad purposes is to be contemplated, no such presumption applies to the use of an alley by an ordinary railroad, and an abutting owner injured by the construction of a sidetrack in an alley may recover damages.—Denver & R. G. R. Co. v. Stinemeyer, Colo., 148 Pac. 860.

59. **Estoppel**—Conveyance.—Where all of those persons in being who might take under a will united in a conveyance, such conveyance operated as an estoppel to them and those claiming under them.—Shuford v. Brady, N. C., 85 S. E. 303.

60.——Dedication.—Where the holder of a bond for title to incumbered land, expressly offers to dedicate it for public use, he is estopped, as against his grantee and the public, from denying that he is without power to dedicate.—Jacobs Pharmacy Co. v. Luckie, Ga., 85 S. E. 332.

61. **Evidence**—Oral Promise.—An employer's oral promise to pay a regular salary during an employe's temporary disability may be shown by parol as part of the consideration for a release.—Swanson v. Union Pac. R. Co., Neb., 152 N. W. 744.

62.——Photograph.—A sketch of the place of an accident, made from a photograph and used merely to illustrate the testimony, held admissible, though there was no proof as to when or how the photograph was taken.—Daniels v. Goeke, Mo., 176 S. W. 301.

63.——Presumption.—The law presumes that children may be born to a married couple as long as the relation exists.—Shuford v. Brady, N. C., 85 S. E. 303.

64. **Executors and Administrators**—Accounting.—A wife's right to an accounting against her husband as to her separate estate is legal, rather than equitable, and may be adjusted by the commissioners to allow and adjust claims against the husband's estate.—Metcalf v. Metcalf's Estate, Vt., 94 Atl. 1.

65.——Funds Misappropriated.—Where a guardian's estate repaid funds misappropriated, amount received by parties participating in misappropriation, held payable to guardian's general creditors and such relief obtainable in action to settle his estate under Civ. Code Prac.

§ 428, subsec. 2, p. 661.—Taylor v. Harris' Adm'r, Ky., 176 S. W. 168.

66. **Extradition** — Different Offense.—Extradited person has no right to have trial of the offense for which he was extradited before he can be tried for an offense subsequently committed, by treaties with Great Britain of August 9, 1842, and July 12, 1889, or Rev. St. § 5275 (Comp. St. 1913, § 10121.)—Collins v. Johnston, 35 Sup. Ct. Rep. 649.

67. **Food**—Intent.—Rev. Laws, c. 56, § 55, prohibiting the keeping with intent to sell of milk to which water has been added applies to a sale of heavy cream, separated by a centrifugal process and containing a greater percentage of milk fat than required by St. 1907, c. 216, but to which water has been added.—Commonwealth v. Elm Farm Milk Co., Mass., 108 N. E. 911.

68. **Frauds, Statute of**—Sharing Profits.—Agreement to share profits and losses of business venture held not void for want of conmade when corporation was organized in pursuance of such venture.—Lowitz v. Kimmerle, U. S. C. C. A., 221 Fed. 857.

69. **Habeas Corpus**—Review of Error.—Denial of request for time to prepare defense, contrary to Gen. Order No. 58, in the Philippine Islands, did not warrant discharge on habeas corpus because deprived of right under Philippine Organic Act July 1, 1902, § 5, to due process of law, but an error of law not reviewable by habeas Corpus.—McMicking v. Shields, 35 Sup. Ct. Rep. 665.

70. **Homicide**—Instructions.—An instruction that a killing is murder where the slayer acts solely because of passions excited by mere words, threats, or mere menaces held not erroneous.—Butler v. State, Ga., 85 S. E. 340.

71. **Homestead**—Claims.—In an action to enjoin the sale of a homestead under an order of sale, plaintiff need not allege that the judgment was not rendered for any one of the class of claims against which there is no homestead exemption.—King v. Wilson, Kan., 148 Pac. 752.

72. **Insurance**—Estoppel.—Insurer, whose assistant superintendent denied liability and told beneficiary that she could recover only insignificant cash surrender value, held estopped from asserting failure to furnish proofs of death as defense.—McLeod v. John Hancock Mut. Life Ins. Co., Mo., 176 S. W. 234.

73.——Foreign Corporation.—A life insurance policy, negotiated in the state, with residents and citizens of the state, delivered therein, and the premiums collected therein, is subject to the laws of the state, though the insurance company is a foreign corporation.—Schuler v. Metropolitan Life Ins. Co., Mo., 176 S. W. 274.

74.——Waiver.—Where an insurance company denied liability on a fire insurance policy because it claimed the fire was of an incendiary origin, it waived the provision of the policy that the loss should not be payable until 60 days after proof thereof.—Riggio v. Fidelity-Phoenix Fire Ins. Co., Mo., 176 S. W. 280.

75. **Interest**—Unpaid Balance.—Where a contract provided that 80 per cent. of the cost of the work should be paid each week and the balance within 30 days after the completion, it was error to allow interest on the unpaid balance from the completion of the work.—John Cowan v. Meyer, Md., 94 Atl. 18.

76. **Judgment**—Full Faith and Credit.—Decree in home state of life insurance company issuing certificate on assessment plan, in a suit by certificate holders, that company had right to make advances from its mortuary fund to pay death claims and replenish the fund by assessments, held denied full faith and credit, within Const. U. S. art. 4, § 1, in suit in another state by beneficiary not a party to the original suit.—Hartford Life Ins. Co. v. Ibs, 35 Sup. Ct. Rep. 692.

77.——Payment.—Note in suit between bank and defendant, a joint maker, held not extinguished by defendant's payment of the judgment, but valid in the hands of defendant against his co-maker.—Chaonia State Bank v. Sollars, Mo., 176 S. W. 263.

78. **Landlord and Tenant**—Estoppel.—Where a landowner sued out a distress warrant against his former tenant and levied on the crop of the person occupying the land, who interposed a claim the the defendant tenant filed no counter affidavit was not such an estoppel as disqualified him from testifying for claimant.—Long v. Clark, Ga., 85 S. E. 358.

79.——Estoppel.—A tenant cannot consent to any application of the subject-matter of the lien for rent, which would leave the lien in force to the prejudice of a subtenant, nor can the landlord apply the tenant's crop to an independent indebtedness to the injury of a subtenant.—Leonard v. Fields, Ga., 85 S. E. 315.

80.——Part Payment.—A landlord seeking to collect the whole rent out of a subtenant's crop should account for such an amount as the rental value of land subrented by the landlord himself from the tenant bears to the entire rental value.—Leonard v. Fields, Ga., 85 S. E. 315.

81.——Possession.—A water and canal company, leasing the right to sell water from an irrigation district, is estopped to deny the validity of the title under which it took possession of the leased premises.—Byington v. Sacramento Valley West Side Canal Co., Cal., 148 Pac. 791.

82.——Renewal.—An agreement of a lessor, indorsed on a lease, to recognize H. in place of W., the lessee, and to renew this agreement, on request, for another period of six years, gives H. not only W.'s optional right under the lease to purchase, but a right to renewal thereof for the six years.—Hurley-Tobin Co. v. White, N. J., 94 Atl. 52.

83. **Larceny**—Reward.—In a prosecution for larceny of cattle, refusal of court to permit question of whether a cattlemen's association did not offer a standing reward for convictions of such larcenies held proper, in the absence of any showing of such an offer in relation to the pending case.—State v. Gulliford, Ore., 148 Pac. 876.

84. **Libel and Slander**—Liability.—Publisher of libel relating to plaintiffs' partnership business, designating the name under which it was carried on, could not escape liability for libel, because there was no mention of the name of either plaintiff.—Wilson v. Sun Pub. Co., Wash., 148 Pac. 774.

85. **Limitation of Actions**—Remaindermen.—In a suit by remaindermen to enjoin defendants from operating oil wells and for discovery and an accounting, recovery for oil taken more than six years before the suit was barred by limitations, where the bill was filed more than six years after all the remaindermen became of age.—Findley v. Warren, Pa., 94 Atl. 69.

86. **Master and Servant**—Actionable Negligence.—In servant's action for injury while using baler, foreman's direction to him to operate it with the lid raised held not actionable negligence where the master could not have reasonably anticipated that such operation would result in injury to plaintiff.—Piorkowski v. A. Leschen & Sons Rope Co., Mo., 176 S. W. 258.

87.——Place of Work.—Part of roof of building within few feet of boards on which employes were occasionally required to work held a part of the place of work, to be kept in a reasonably safe condition.—William Sebald Brewing Co. v. Tompkins, U. S. C. C. A., 221 Fed. 895.

88.——Res Ipsa Loquitur.—In an action for death of an employe killed by falling down a mine shaft when the "skip" in which he was riding turned over, charge authorizing jury to consider doctrine of res ipsa loquitur on the issue of negligence held proper.—Hardister v. Richardson, N. C., 85 S. E. 304.

89.——Vice Principal.—A foreman, though for some purposes considered a vice principal, may recover from his employer for injuries resulting from defective appliances furnished by the employer.—Daniels v. Goeke, Mo., 176 S. W. 301.

90.——Warning.—In action for death of plaintiff's son in plaintiff's employ, hauling sand for defendant from pit owned by third person, killed by falling of tree from edge of pit, held, that defendant owed no duty of warning, and that there could be no recovery.—Lenzi v. Hanscom Const. Co., Mass., 108 N. E. 898.

91. **Mines and Minerals**—Contemporaneous Construction.—A coal lease held ambiguous as to what proportion of small sizes of coal should compose the minimum quantity to be mined an-

nually, and hence, as to such point, subject to the rule of contemporaneous construction by the parties.—Lehigh Valley R. Co. v. Searle and Stark Heirs, Pa., 94 Atl. 74.

92. **Municipal Corporations**—Benefits.—Where a street, which otherwise would have been submerged, was elevated more than was necessary, the property benefited cannot be assessed in favor of the property damaged by the excessive elevation, which in itself did not constitute a benefit.—In re Shilshole Ave., Wash., 148 Pac. 781.

93.——Equity.—Equity will declare the offices of members of the city council vacant where they have abandoned such offices, leaving the council without a quorum, where the city has no adequate remedy at law.—City of Williamsburg v. Weesner, Ky., 176 S. W. 224.

94.——Ordinary Care.—The duty of the driver of a vehicle to use ordinary care to avoid defects in highways is owed not only to himself but to others likely to be injured by deviation of the vehicle from its proper course by reason of such defects.—Geise v. Mercer Bottling Co., N. J., 94 Atl. 24.

95. **Negligence**—Comparative Negligence.—The direction in the Employers' Liability Act April 22, 1908, § 3, that the diminution of damages on plaintiff's contributory negligence shall be in proportion to his negligence, means that, where the cause of negligence is partly attributable to him and partly to the carrier, he shall not recover full damages.—Seaboard Air Line Ry. v. Tilghman, 35 Sup. Ct. Rep. 653.

96.——Concurrent Negligence.—Where an injury is caused by the concurrent negligence of two parties, the injured person may recover from either or both, and neither can defend on the ground that the concurrent negligence of the other contributed to the injury.—City of Gary v. Geisel, Ind., 108 N. E. 876.

97.——Concurrent Negligence.—Where a driver and one riding with him were both engaged in looking and listening for a train as they approached a crossing, the negligence of each while so engaged was the negligence of both.—Erie R. Co. v. Hurlburt, U. S. C. C. A., 221 Fed. 907.

98.——Discovery of Defects.—Automobile manufacturer held not liable for injuries to purchaser from dealer because of its negligent failure to discover defects in one of the wheels.—Cadillac Motor Car Co. v. Johnson, U. S. C. C. A., 221 Fed. 801.

99.——Proximate Cause.—In action for injury from a revolving door in defendant's store, the fact that one hurriedly going in the opposite direction caused the door to spin and strike plaintiff held not to break the connection between defendant's negligence and injury; since it should have been anticipated.—Norton v Chandler & Co., Mass., 108 N. E. 897.

100. **Notice**—Sent by Mail.—Mailing notice of election to demand a refund of money paid for corporate stock held not to constitute service of the notice in the absence of an estoppel, waiver, or agreement that this should constitute service.—Hoban v. Hudson, Minn., 152 N. W. 723.

101. **Perpetuities**—Validity.—A devise of a remainder to testator's grandchildren for life, and then to their children, is valid as to the grandchildren, but too remote as to the great-grandchildren.—Goffe v. Goffe, R. I., 94 Atl. 2.

102. **Public Lands**—Donation.—To acquire public lands by donation, the things prescribed by law must be observed, and the things inhibited must not be done.—McGoldrick Lumber Co. v. Kinsolving, U. S. C. C. A., 221 Fed. 819.

103. **Railroads**—Contributory Negligence.—One killed at a city crossing held negligent in attempting to cross before an approaching train in plain sight.—Louisville & N. R. Co. v. Benke's Adm'x, Ky., 176 S. W. 212.

104.——Contributory Negligence. — Whether one killed in a crossing accident was guilty of contributory negligence depends on whether an ordinarily prudent person in the same situation would have exercised the kind and degree of care manifested by decedent under all the surrounding facts and circumstances.—Lutz v. Cleveland, C., C. & St. L. Ry. Co., Ind., 108 N. E. 886.

105.——Look and Listen.—Plaintiff held negligent in failing to see approaching train, though she was riding with her husband; she having been looking and listening independent of her husband.—Erie R. Co. v. Hurlburt, U. S. C. C. A., 221 Fed. 907.

106.——Statutory Construction.—Requirement of Laws Mo. 1907, p. 169, amending Rev. St. 1899, § 1110, compelling railroads within three months after completion to construct openings in rights of way to take care of surface water, allows railroads already existing a reasonable time within which to construct the openings.—Chicago & Alton Railway Co. v. Traubarger, 35 Sup. Ct. Rep. 678.

107.——Statutory Construction.—The term "trains," as used in Safety Appliance Act March 2, 1893, and its amendments, includes the transfer trains of freight cars operated by switching crews between two freight yards of an interstate railway on opposite sides of the Missouri river.—United States v. Chicago, B. & Q. R. Co., 35 Sup. Ct. Rep. 634.

108. **Rape**—Cross-Examination.—In a prosecution for rape where the fact that prosecutrix had borne a child was first brought out by defendant on cross-examination of her, he could not thereafter introduce evidence of intercourse between her and another.—People v. Kilfoil, Cal., 148 Pac. 812.

109. **Reformation of Instruments**—Mutual Understanding.—Where a written contract was executed by the parties with an understanding of its terms, but it was expressly agreed that one clause should not be given the meaning it expressed, the contract can be reformed.—Meacham Contracting Co. v. City of Hopkinsville, Ky., 176 S. W. 187.

110. **Release**—Validity of.—A promise of the state board of control not to press a claim against M. during his lifetime, but to collect it either out of his estate or that of his wife, held not a release so as to entitle the person procuring such promise to the compensation agreed to be paid on the procurement of a release.—Meng v. Collins, Kan., 148 Pac. 742.

111. **Sales**—Rescission.—A purchaser of an automobile, suing to rescind the contract and recover the amount paid on the purchase price, was not entitled to judgment, where there had been no tender of the machine.—Simmons v. Ruggles, Tex., 176 S. W. 152.

112. **Shipping**—Knowledge of Defect.—A ship held not liable for the sinking of a lighter being discharged alongside through a defective winch furnished by the ship for the use of the stevedores, but which was negligently operated by an employe of the stevedores, who knew of the defect.—The Satilla, U. S. D. C., 221 Fed. 949.

113. **Specific Performance**—Meeting of Minds.—Specific performance of a contract for the purchase of land will be denied where there was no meeting of the minds of the parties.—Adams v. Georgia-Carolina Power Co., S. C., 85 S. E. 312.

114. **Street Railroads**—Reasonable Care.—A street railway company, maintaining a switch which caused vehicles to cut a rut in the pavement, held to owe a duty of reasonable care to observe such condition and guard against it becoming a danger to those using the street.—Geise v. Mercer Bottling Co., N. J., 94 Atl. 24.

115. **Trade-Marks and Trade-Names**—Registration.—After expiration of copyright to the Webster dictionaries, the further use of the word "Webster" to designate dictionaries could not be acquired by registration as a trademark.—G. & C. Merriam Co. v. Syndicate Pub. Co., 35 Sup. Ct. Rep. 708.

116. **Weapons**—Carrying Concealed.—A person carrying a dangerous weapon concealed in a satchel in his hands has it "about his person," within Laws 1912, p. 364.—Livesey v. Helbig, N. J., 94 Atl. 47.

117. **Wills**—Remainder.—Where testator devised land to his son, remainder to the son's eldest child, directing that the son's wife should take in the absence of issue, the wife took a remainder in fee defeasible on birth of children; hence the spouses could not, none having been born, pass title.—Shuford v. Brady, N. C., 85 S. E. 303.